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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/859,719	05/16/2001	Devin Eugene Mix	12929.1059US01	2781
23552	7590	10/28/2003	EXAMINER	
MERCHANT & GOULD PC P.O. BOX 2903 MINNEAPOLIS, MN 55402-0903			JULES, FRANTZ F	
			ART UNIT	PAPER NUMBER

3617

DATE MAILED: 10/28/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/859,719

Applicant(s)

MIX ET AL.

Examiner

Frantz F. Jules

Art Unit

3617

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 September 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 8-10, 17 and 20 is/are allowed.
- 6) ☒ Claim(s) 1-7, 11, 12, 14-16, 18 and 19 is/are rejected.
- 7) ☒ Claim(s) 13 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____
- 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 11, 14-15 are rejected under 35 U.S.C. 102(b) as being anticipated by Charmor (GB 2 350 420 A).

Claims 11, 14-15

Charmor teach all the limitations of claims 11, 14-15 by showing in figs 1-3 a flame simulation apparatus comprising a translucent screen (8) having a front surface and a back surface, at least one bobble-flame constituted by slit-ribbon type flame-effect simulating devices (9) coupled to a support panel, the bouble-flame including a surface with reflective material, as per the disclosure of col. 5, lines 3-8; a device (14) which is a fan that moves the bobble-flame as per the disclosure of column 10-16, and a light source (20) to reflect the light off of the bobble-flame (9) and onto the back surface of the translucent screen (8) to generate an image of a flickering flame effect that is viewable from the front surface of the translucent screen as disclosed in column 8, lines 5-14.

The device comprises a blower (14) positioned to blow air upon and move the at least one bobble-flame (9) as required by claim 14.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-7, 12, 16, 18-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Charmor in view of Hess (US6,190,019) and Morton (US 6,078,424).

Claims 1-7, 12, 16, 18-19

Hess teaches all the limitations of claims 1-7, 12, 16, 18-19 except for a fireplace comprising an apparatus for image display having a lenticular screen with a movable image layer by a motion imparting device positioned behind the front panel to simulate a fire. The general concept of providing an apparatus for producing a visual effect of increase depth in providing reflection of an image applied to a transparent panel is well known in the art as illustrated by Hess which discloses the use of an apparatus for producing a visual effect of increase depth in providing reflection of an image applied to a transparent panel (20), see abstract section, col. 1, lines 5-30. Morton discloses a lenticular screen with a movable image layer by a motion imparting device in an apparatus for image display, see abstract section, figs. 1-9, column 4, lines 1-67. It would have been obvious to one of ordinary skill in the art at the time of the invention to modify Charmor to include the use of an apparatus for producing a visual effect of increase depth in providing reflection of an image applied to a transparent panel in his advantageous fireplace as taught by Hess in order to an impression of increase size or depth of the bouble flame without modifying the size of the fire place. In addition, it would have been obvious to one of ordinary skill in the art at the time of the invention to modify Hess to include the use of a lenticular screen

with a movable image layer by a motion imparting device behind the front panel of his advantageous apparatus for image display as taught by Morton in order to protect the fire place screen from being damage by accidental impact on the screen by providing a stronger screen.

Allowable Subject Matter

5. Claim 13 is objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

6. Claims 8-10, 17, and 20 stand allowable.

Response to Arguments

7. Applicant's arguments filed 09/11/03 have been fully considered but they are not moot in view of the new grounds of rejection.

Conclusion

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Frantz F. Jules whose telephone number is (703) 308-8780. The examiner can normally be reached on Monday-Thursday and every other Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph S. Morano can be reached on (703) 308-0230. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-7687 for regular communications and (703) 305-7687 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1113.

Application/Control Number: 09/859,719
Art Unit: 3617

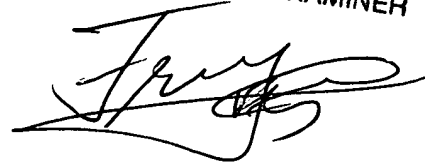
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Frantz F. Jules
Examiner
Art Unit 3617

FFJ

October 25, 2003

FRANTZ F. JULES
PATENT EXAMINER

A handwritten signature in black ink, appearing to read 'Frantz', written over the printed name and title.